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8 CFR Ch. I (1–11 Edition)

he shall be advised from time to time of changes therein.

[40 FR 23272, May 29, 1975, as amended at 49 FR 44086, Nov. 2, 1984; 62 FR 9075, Feb. 28, 1997]

§ 292.3 Professional conduct for practitioners—Rules and procedures.

(a) *General provisions.* (1) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before DHS when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in 8 CFR 1003.102. In accordance with the disciplinary proceedings set forth in 8 CFR part 1003, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(i) Expulsion which is permanent, from practice before the Board and the Immigration Courts, or DHS, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts, or DHS, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(2) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in 8 CFR 1.1(f) who does not represent the federal government, or any representative as defined in 8 CFR 1.1(j). Attorneys employed by DHS will be subject to discipline pursuant to paragraph (i) of this section.

(b) *Grounds of discipline.* It is deemed to be in the public interest for the adjudicating official or the Board to impose disciplinary sanctions as described in paragraph (a)(1) of this section against any practitioner who falls within one or more of the categories enumerated in 8 CFR 1003.102. These categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation

should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.

(c) *Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify DHS of conviction or discipline.* (1) *Immediate suspension proceedings.* Immediate suspension proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.103. DHS shall file a petition with the Board to suspend immediately from practice before DHS any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h), any practitioner who has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter.

(2) *Copies and proof of service.* A copy of the petition will be forwarded to EOIR, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of EOIR's request to broaden the scope of any immediate suspension must be filed with the Board.

(3) *Summary disciplinary proceedings.* Summary disciplinary proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.103. DHS shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (c)(1) of this section by the issuance of a Notice of Intent to Discipline, upon receipt of a certified copy of the order, judgment, and/or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a certified copy of such document. Delays in initiation of summary disciplinary proceedings under this section will not impact an immediate suspension imposed pursuant to paragraph

(c)(1) of this section. Any such proceeding will not be concluded until all direct appeals from an underlying criminal conviction have been completed.

(4) *Duty of practitioner to notify DHS of conviction or discipline.* Within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending, of any conviction or discipline for professional misconduct entered on or after July 27, 2000, a practitioner must notify DHS disciplinary counsel if the practitioner has been: Found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h); suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or placed on an interim suspension pending a final resolution of the underlying disciplinary matter. Failure to notify DHS disciplinary counsel as required may result in immediate suspension as set forth in paragraph (c)(1) of this section.

(d) *Filing of complaints of misconduct occurring before DHS; preliminary inquiry; resolutions; referral of complaints.* (1) *Filing of complaints of misconduct occurring before DHS.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner before DHS must be filed with the DHS disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. The DHS disciplinary counsel will notify EOIR disciplinary counsel of any disciplinary complaint that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(2) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its

own initiative, the DHS disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceeding based thereon. If the DHS disciplinary counsel determines that a complaint is without merit, no further action will be taken. The DHS disciplinary counsel may, in his or her discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner will be notified of any such determination in writing.

(3) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The DHS disciplinary counsel may, in his or her discretion, issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(e) *Notice of Intent to Discipline.* (1) *Issuance of Notice to Practitioner.* If, upon completion of the preliminary inquiry, the DHS disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in 8 CFR 1003.102, it will file with the Board and issue to the practitioner who was the subject of the preliminary inquiry a Notice of Intent to Discipline. Service of this notice will be made upon the practitioner by either certified mail to his or her last known address, as defined in paragraph (e)(2) of this section, or by personal delivery. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to § 292.3(c), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline. Notice of Intent to Discipline proceedings will be

conducted in accordance with the provisions set forth in 8 CFR 1003.105 and 1003.106.

(2) *Practitioner's address.* For the purposes of this section, the last known address of a practitioner is the practitioner's address as it appears in DHS records if the practitioner is actively representing an applicant or petitioner before DHS on the date the DHS disciplinary counsel issues the Notice of Intent to Discipline. If the practitioner does not have a matter pending before DHS on the date of the issuance of a Notice of Intent to Discipline, then the last known address for a practitioner will be as follows:

(i) *Attorneys in the United States:* The attorney's address that is on record with a state jurisdiction that licensed the attorney to practice law.

(ii) *Accredited representatives:* The address of a recognized organization with which the accredited representative is affiliated.

(iii) *Accredited officials:* The address of the embassy of the foreign government that employs the accredited official.

(iv) *All other practitioners:* The address for the practitioner that appears in DHS records for the application or petition proceeding in which the DHS official permitted the practitioner to appear.

(3) *Copy of Notice to EOIR; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the EOIR disciplinary counsel. Under Department of Justice regulations in 8 CFR chapter V, the EOIR disciplinary counsel may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the Board or the adjudicating official.

(4) *Answer.* The practitioner shall file a written answer or a written request for a hearing to the Notice of Intent to Discipline in accordance with 8 CFR 1003.105. If a practitioner fails to file a

timely answer, proceedings will be conducted according to 8 CFR 1003.105.

(f) *Right to be heard and disposition; decision; appeal; and reinstatement after expulsion or suspension.* Upon the filing of an answer, the matter shall be heard, decided, and appeals filed according to the procedures set forth in 8 CFR 1003.106. Reinstatement proceedings after expulsion or suspension shall be conducted according to the procedures set forth in 8 CFR 1003.107.

(g) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the DHS disciplinary counsel may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) will be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice.

(h) *Confidentiality.* (1) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation or as authorized by this regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the DHS disciplinary counsel may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) *Disclosure of information for the purpose of protecting the public.* The DHS disciplinary counsel may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of

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the allegations. If disclosure of information is made pursuant to this paragraph, the DHS disciplinary counsel may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such an authority;

(D) A practitioner is the subject of multiple disciplinary complaints and the DHS disciplinary counsel has determined not to pursue all of the complaints. The DHS disciplinary counsel may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(ii) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The DHS disciplinary counsel may, in his or her discretion, disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for conducting disciplinary investigations or proceedings;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practi-

tioner becomes subject to a subsequent Notice of Intent to Discipline.

(3) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in 8 CFR 1003.106(a)(v).

(i) *Discipline of government attorneys.* Complaints regarding the conduct or behavior of DHS attorneys shall be directed to the Office of the Inspector General, DHS. If disciplinary action is warranted, it will be administered pursuant to the Department's attorney discipline procedures.

[75 FR 5228, Feb. 2, 2010]

§ 292.4 Appearances.

(a) *Authority to appear and act.* An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS. Substitution may be permitted upon the written withdrawal of the attorney or accredited representative of record or upon the filing of a new form by a new attorney or accredited representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is